

# BUSINESS LAW



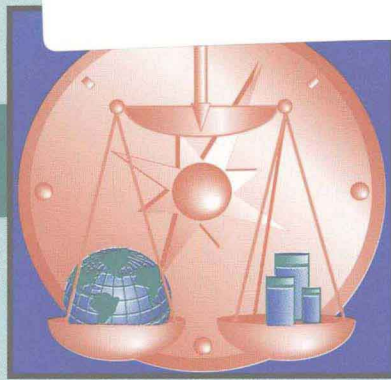
*The Legal, Ethical, and  
International Environment*

THIRD EDITION

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HENRY R. CHEESEMAN





# BUSINESS LAW

THE LEGAL, ETHICAL, AND INTERNATIONAL ENVIRONMENT

THIRD EDITION

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## SHOU-YI

Like oceans, we have spent  
this time together before.  
In galley slave pits you fed me  
water and removed my slivers.  
Riding Ch'u dynasty chariots  
we perished on Mongol swords.  
We toiled rocks in chains  
and built Stonehenge,  
drank with King Arthur  
and danced with Black Elk.  
We fled, hand-in-hand, dodging  
Hitler's bullets, and  
I carried you over the border  
to have our baby in freedom.  
During past full moons, the sun set  
the seas in orbit  
and as driftwood we tumbled  
onto the shores of Los Angeles.  
Another life together, my love?

# PREFACE

*Business Law: The Legal, Ethical, and International Environment* (third edition) provides complete coverage of traditional business law topics and addresses the legal environment in which business must operate. Because the study of the legal environment of business is as much a study of history, ethics, social responsibility, policy, diversity, and economics as it is a study of the laws themselves, I have integrated these issues into my presentation of business law topics. Over 230 enrichment boxes throughout the book focus on contemporary, ethical, international and business application issues. Every case ends with questions about the ethical, policy, and business implications of the issue before the court. And more space is devoted to the fundamental concepts of ethics, environmental, government regulation, and international topics than in other books, allowing this book to meet the AACSB's standards on ethics and globalization in the curriculum.

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## FOCUSES OF THE BOOK

### Traditional Business Law

This book first presents topics used in traditional business law courses. Unit I contains four chapters that introduce the student to the "legal environment of business." The first two chapters discuss American legal heritage, the litigation process, and alternative dispute resolution. Chapter 3 discusses U.S. constitutional law. A chapter devoted exclusively to *international law*, "International Law and Dispute Resolution," completes this unit.

Unit II covers torts, crimes, and *ethics and social responsibility of business*. Chapter 5 covers traditional tort law, while Chapter 6 covers intellectual property rights. Chapter 7 covers crimes, including white collar and business crimes. A separate chapter on "Ethics and Social Responsibility of Business" completes this unit.

Unit III contains eight chapters that cover the common law of contracts. This is traditional contract law modernized with recent cases. This unit ends with material on torts associated with contracts.

Unit IV, entitled "Sales and Lease Contracts," includes five chapters. The primary focus of this unit is the Uniform Commercial Code (UCC). Three chapters focus on sales and lease contracts, one chapter focuses on warranty law, and a fifth chapter focuses on product liability.

Unit V, entitled "Negotiable Instruments," includes four chapters on negotiable instruments, checks, wire transfers, and the banking system.

Unit VI, entitled "Credit and Bankruptcy," includes three chapters that discuss secured transactions, lender liability, credit, and bankruptcy.

Unit VII, "Agency Law," consists of two chapters that discuss the creation and termination of agency relationships, and the liability of principals and agents.

Unit VIII is entitled "Noncorporate Business Organizations." Chapter 31 discusses forms of conducting domestic and international business. This is followed by three chapters that cover general and limited partnerships, limited liability partnerships, and limited liability companies.

Unit IX, "Corporations," consists of six chapters. The first three chapters cover the formation, financing, and management of corporations. Chapter 38 discusses mergers and



hostile takeovers of corporations, and Chapter 39 discusses securities regulation and investor protection. The last chapter of this unit covers private franchises and licensing.

Unit X, “Employment Law,” includes four chapters that discuss employment contracts, worker protection laws, equal opportunity in employment laws, labor laws, and the liability of accountants and other professionals.

Unit XI consists of five chapters that deal with government regulation. Chapter 45 covers administrative law. Consumer protection and environmental protection are covered in the next two chapters. The fourth chapter of this unit discusses antitrust law and the fifth chapter covers agriculture, natural resource, and commodities laws.

Unit XII, entitled “Property,” is a five-chapter unit that includes a chapter on personal property and bailments, two chapters on real property and landlord-tenant relationships, one chapter on insurance, and a final chapter on wills, trusts, and estates.

From these materials a professor can design a business law course that fits the needs of the school and students. In covering traditional business law topics, throughout this book, we stress ethics and social responsibility, current legal issues, international law, and cultural diversity in order to meet the **AACSB’s accreditation standards**.

### Ethics and Social Responsibility

Ethics is integrated throughout the book in four ways: (1) by discussing ethics frequently in the text itself, (2) by asking ethics questions after every case, (3) by presenting special *Ethics Cases* at the end of each chapter, and (4) by having special boxes entitled “Ethical Perspective” located in most of the chapters.

Chapter 8 is devoted exclusively to *ethics and social responsibility of business*. The moral theories of Kant and other philosophers are discussed, and then applied to actual cases.

The *Ethical Perspective* boxes set forth the facts of real court cases and ask the reader to consider the ethical issues raised in each case. This is the format of *applied ethics*—asking probing ethics questions pertaining to real business situations, rather than using hypothetical cases.

Almost every case in the book is followed by an ethics question that requires students to consider the bounds of fairness in a particular situation. In addition, each chapter ends with several special *Ethics Cases* that require students to apply ethics as well as legal rules to actual business law cases.

### Contemporary Legal Issues

One of the primary goals of this book is to review *contemporary* business law concepts and topics. This is done by presenting modern statutory and regulatory law and recent court decisions in (1) the cases and (2) the “Contemporary Perspective” boxes. The choice of cases balances contemporary cases against more traditional cases usually taught to illustrate specific concepts.

The “Contemporary Perspective” boxes highlight modern legal issues faced by business and also indicate how the law evolves as new business-related issues arise. One issue that has recently become more important is sexual harassment in the workplace. Contemporary Perspective box “Feminist Legal Theory” helps define this complex issue. There is usually one Contemporary Perspective box in every chapter.

In addition, I have placed new “Internet and Telecommunications Law” boxes throughout the book to discuss how the law impacts this new technology. For example, the box entitled “Broad Free-Speech Rights Granted in Cyberspace” in Chapter 3 discusses how a federal court granted the highest possible free-speech protection under the Constitution to communication over the Internet.

### International Law

Because of the importance placed on *international issues* in today’s business education, I thoroughly integrate international issues into the presentation in three ways. First, the major legal systems of the world are discussed in Chapter 1.

Second, a chapter devoted exclusively to international law—Chapter 4—introduces international law, courts, and organizations. This chapter also discusses the U.S. government's role in foreign affairs, sources of international law, and how international business disputes are resolved.

Third, many chapters have at least one “International Perspective” box. These boxes focus on specific international issues relevant to the chapter. For example, the product liability chapter—Chapter 21—includes the International Perspective box “Product Liability Law in Japan.”

## Diversity

The AACSB accreditation standards require that issues concerning *diversity* be included in the business school curriculum. This book accomplishes this goal in two ways. First, specific boxes located throughout the book address diversity issues. For example, the box “The Reasonable Woman Standard” appears in Unit X.

Second, this book contains a separate chapter that covers equal opportunity in employment. This chapter—Chapter 42—discusses the major statutes and court decisions that outlaw discrimination in employment. This chapter discusses Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans With Disabilities Act of 1990, and other federal and state laws that guarantee equal opportunity to all protected classes. The topics of sexual harassment in the workplace and affirmative action are thoroughly covered.

## Business Application

Many of today's Business Law and Legal Environment textbooks take a too “legalistic” approach to presenting legal topics to business students. This book recognizes that what is important to business students is the *application* of court decisions, statutes, and government regulation to business. In addition to the cases presented in the book, I have included two new features in this book that clearly demonstrate the application of law and government regulation to the business environment.

The first new feature is a special box entitled “Business Application.” In these boxes I have taken a modern business law topic and shown how it affects business and business managers and owners. For example, the box entitled “Ouch! The Coffee's Too Hot!” in Chapter 5 discusses the liability of McDonald's for spilled coffee. Almost every chapter features a Business Application Box.

The second new feature is a box entitled “Business Checklist” which appears in most chapters. These boxes are designed to show a business person the laws and regulations she or he should consider when making a business decision and the steps to take to comply with the law. For example, the box entitled “Why Operate a Business as a Limited Liability Company (LLC)?” discusses the benefits and detriments of using this new form of business entity.

These two new features further enhance this book's underlying pedagogy of showing students how the law affects business and business decision-making.

## The Legal Environment and Government Regulation

The AACSB's accreditation standards also require that the *legal environment of business* and *government regulation* be included in the business school curriculum. This book includes the following chapters that specifically cover government regulation of business.

- Chapter 28 Bankruptcy and Reorganization. Discusses how the law of bankruptcy regulates creditors' and debtors' rights in a bankruptcy proceeding.
- Chapter 38 Mergers and Hostile Takeovers of Corporations. Describes how the government regulates hostile takeovers of companies and protects shareholder rights during the merger process.

- Chapter 39 Securities Regulation and Investor Protection. Discusses federal and state securities laws that (1) mandate disclosure by companies to shareholders and prospective shareholders and (2) prohibit securities fraud.
- Chapter 42 Equal Opportunity in Employment. Describes federal and state laws that prohibit discrimination against persons in protected classes by employers.
- Chapter 43 Labor Relations Law. Describes government regulations that protect employees' rights to form and join unions.
- Chapter 45 Administrative Law and Government Regulation. Describes administrative law and discusses government regulation of business.
- Chapter 46 Consumer Protection. Describes government statutes and regulations that protect consumers from dangerous products and services and fraudulent consumer transactions.
- Chapter 47 Environmental Protection. Discusses major federal and state laws that protect the environment from harmful air, water, hazardous wastes, and toxic pollution.
- Chapter 48 Antitrust Law. Discusses government regulation of the economy that prohibits certain forms of anticompetitive behavior and unfair methods of competition.
- Chapter 49 Agricultural, Natural Resource, and Commodities Laws and Regulations. Describes statutes, regulations, and cases that apply to natural resources, agriculture, and commodities.

Based on the materials presented in this book, the professor can use the book for a traditional business law course or a legal environment course, or both.

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## DEVELOPMENT OF THE TEXT

Our goal in developing this text has been to provide professors with the kind of business law and legal environment text they are seeking for the late 1990s and early 2000s, one that gives students the clearest, most relevant explanation of the fundamental principles of business law and at the same time conveys the fascinating interplay of ethical, social, environmental, and global issues and emerging trends in the law.

To ensure that the text would meet the needs of the students for whom it was written, Prentice Hall assigned a developmental editor, Marsha Leest, to work with me as I was writing the text. For two years, Marsha and I labored over each of the 54 chapters of this book and fine-tuned draft after draft until we were certain that each chapter was the best that it could be. As a result, readers of this book will find each chapter interesting and fully comprehensible.

To ensure that the text would be totally accurate and up-to-date, dozens of reviewers read each draft and made hundreds of helpful suggestions for improvement. In addition to the written reviews, a reviewer conference and focus group was held not only to look at the text itself but to focus on broader issues—current trends in the teaching of business law, the strengths and weaknesses of current teaching tools, and the expectations and special needs of today's students. This input was a major factor in the shaping of this book.

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## PEDAGOGICAL FEATURES

### Cases

Cases are the examples in a business law course. They show how the abstractions of the law are actually applied to disputes. For students, cases must clearly illustrate points of law. For professors, cases can be the basis of student exercises that involve



the student in the thought process behind the rules of law. In this book and in the supplements that accompany it, Prentice Hall and I have kept these two goals in mind. The approximately 150 cases in the book clearly identify the issue under question, yet retain the voice of the court in the opinions. Each case provides (1) the facts, (2) the issue, (3) the decision, (4) the opinion, and (5) case questions that explore the ethical, policy, and business implications of the case.

## Exhibits

Because the law has its own forms and documents that are perhaps foreign to the student, this book includes many illustrations of these items. Most of the exhibits are available to the instructor in the Transparency Masters supplement.

## Student Annotations

Students will find the notes placed in the margins helpful as they study each chapter. These annotations draw students to consider important aspects of the topics they are reading—to expand their understanding of the topic and to give study advice. The types of annotations include

- Landmark Decision: Cases that are important to the development of business law
- Caution: Notes that alert the reader to a possible misapplication or misperception of the law
- Note: Dates, places, and people important to business law
- Business Brief: Applications that are specific to the functioning of a business.

In addition to these annotations, a *running glossary* in the margins helps students learn key terms.

## Critical Legal Thinking Cases

Each chapter presents approximately eight to ten Critical Legal Thinking Cases drawn from real-life cases whose facts and situations have been edited and written to test the application of the legal concepts and principles developed in the chapter. These questions can be used for class discussion or as homework assignments. The answers to these questions appear in the *Instructor's Resource Manual*.

## Ethics Cases

Each chapter ends with several Ethics Cases. These are real life cases that require a student to apply legal principles they have studied *and* to address ethics and social responsibility issues presented by the case. The answers to the legal questions presented and a discussion of the ethics issues appear in the *Instructor's Resource Manual*.

## Critical Legal Thinking Writing Assignments

Each chapter ends with a suggested case writing assignment for the student. The name of the case and the questions the students are to address appear at the end of each chapter. The actual writing assignment cases themselves—which are in the court's language—appear in a supplement to this book and are numbered by chapter.

These writing assignments are designed to teach the student to write better and to apply *critical legal thinking*. The student is to brief the case and answer the questions posed.

These writing assignments are optional and may be assigned at the discretion of individual professors. The writing assignment cases can be used as homework assignments, group projects, additional cases to cover in class discussions, test questions, or otherwise as the professor deems useful.

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## SUPPLEMENTS

In addition to the book itself, we have assembled a full supplements package that aims at (1) streamlining the course preparation and administration process for instructors and (2) enriching the student's exposure to the ideas and implications of the law for business.

### **Instructor's Resource Manual**

The *Instructor's Resource Manual*, by Andrea Giampetro-Meyer, Loyola College in Maryland, is the ultimate in course organization. Designed to streamline class preparation time, this resource includes the following features:

- Lecture outlines for each chapter, with references to other supplements as appropriate
- Case briefs
- Teaching notes and tips
- Notes on the chapter objectives
- Answers to the end-of-chapter Critical Legal Thinking Cases and Ethics Cases
- Answers to Critical Legal Thinking Writing Assignment cases

### **ABC News Wall Street Journal/Prentice Hall Video Library for Business Law**

Video is one of the most dynamic supplements an instructor can use to make the most of classroom time. But the quality of the video material and how well it relates to the course can still make all the difference. For these reasons, Prentice Hall and ABC News have worked together to bring out the best and most comprehensive video supplements available.

Through its wide variety of award-winning programs, such as *Nightline*, *World News Tonight*, *This Week With David Brinkley*, *20/20*, *Day One*, and *Prime Time Live*, ABC offers a key resource for feature- and documentary-style videos related to important concepts and current debates in the discipline. Prentice Hall and Peter J. Shedd, consulting editor for business law, have selected dynamic videos on topics that work with the course and the text. No longer will the instructor have to sift through thousands of videos and films to find one that will suit the needs of the course: Prentice Hall and ABC have done it all already.

### **The Prentice Hall/New York Times Contemporary View Program**

The *New York Times* and Prentice Hall are sponsoring "Themes of *The Times*," a program designed to enhance student access to current information of relevance in the classroom.

Through this program, the core subject matter provided in the text is supplemented by a collection of time-sensitive articles from one of the world's most distinguished newspapers, *The New York Times*. These articles demonstrate the vital, ongoing connection between what is learned in the classroom and what is happening in the world around us.

Prentice Hall and *The New York Times* are proud to co-sponsor "Themes of *The Times*." We hope it will make the reading of both textbooks and newspapers a more dynamic, involving process.

### **Test Item File**

The test bank for this book has been carefully prepared by Rhonda Carlson. The test bank includes a variety of question types designed to accurately test the student's comprehension of course material. There are about 2,400 test questions in the test item file. Test Manager, A Computerized Test Item File, is also available.

## Study Guide

The study guide, by Nan S. Ellis, Loyola College in Maryland, teaches students what questions to ask as they approach a case. It also contains sample multiple-choice, fill-in-the blank, and essay questions so the student can test his or her knowledge of the subject matter and better prepare for examinations. The study guide also contains a case appendix.

## Transparencies

Created by Rhonda Carlson, the transparency package contains 184 acetates covering the key concepts in the text. An electronic version is also available.

## Lexis

The Lexis on-line legal database is available to adopters of this text through a special agreement with Prentice Hall. Contact your Prentice Hall representative for more information.

## PH BLAW

Prentice Hall has developed a dynamic site on the World Wide Web, the first of its kind in legal business studies. PH BLAW enables professors and students to include the latest in business developments in their work. The information is updated every other week. The features of PH BLAW include Newscenter, Supplemental Cases, links to relevant company and government agencies, chapter and page references to main PH textbooks, author updates and more. Be sure to include the web in your classes. Surf to <http://www.prenhall.com/phblaw>.

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## ACKNOWLEDGMENTS

When I first began writing this book, I was a solitary figure researching cases in the law library and writing text at my desk. As time passed, others entered upon the scene—editors, research assistants, reviewers, production personnel—and touched the project and made it better. Although my name appears on the cover of this book, it is no longer mine alone. I humbly thank the following persons for their contribution to this project.

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While writing this Preface, I have thought about the thousands of hours I have spent researching, writing, and preparing this manuscript. I loved every minute, and the knowledge gained has been sufficient reward for the endeavor.

I hope this book and its supplementary materials will serve you as well as they have served me.

With joy and sadness, emptiness and  
fullness, honor and humility,  
I surrender the fruits  
of this labor

**Henry R. Cheeseman**



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